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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,585	12/19/2005	Winfried Viktorius	554-001.003	9855

4955 7590 01/10/2007
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EXAMINER

TRAN, HUAN HUU

ART UNIT	PAPER NUMBER
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2861

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/10/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/561,585

Applicant(s)

VICKTORIUS, WINFRIED

Examiner

Huan H. Tran

Art Unit

2861

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Preliminary Amendment filed on 12/19/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/19/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-5 recite the limitation "the resilient holding means" in line 12 of base claim 1. There is insufficient antecedent basis for this limitation in the claim. Perhaps it should be changed to – a resilient holding means – to refer to the resilient holding means (9) shown in the drawings.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1 rejected under 35 U.S.C. 102(b) as being clearly anticipated by Yamashita (JP 03-270964).

As to claim 1, Yamashita discloses a printing device for printing sheet elements (20) that are serially fed to the printing device comprising a feed device for feeding the sheet elements (20) to a print head which acts on the sheet element (20), wherein said print head comprises a

Art Unit: 2861

thermal slat (44,66, or 67) which is supported flexibly by a carrier device (46,62, or 62') such that between the thermal slat (44,66, or 67) and the sheet element (20) a counterpressure surface (14) is formed at a predefined surface pressure on the sheet element (20) to be printed, characterized in that the thermal slat (44,66, or 67) is associated with an adaptor means (50,52, or 53) that is exchangeable together with said thermal slat (44,66, or 67), with which adaptor means (50, 52, or 53) the excursion of the resilient holding means (46,62, or 62') for the thermal slat (44, 66, or 67) can be adjusted such that the surface pressure is constant irrespective of the width of the thermal slat (44, 66, or 67).

It should be noted that the characteristics of the sheet element as recited in the limitation "which sheet elements comprise a surface material, in particular product labels made of temperature-sensitive paper or paper substitute materials " is noted. However, it is well settled that material or article worked upon by apparatus does not limit apparatus claim. See MPEP 2115.

See Ex parte Thibault, 164 USPQ 666, 667, (Bd. App. 1969) ("Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim. ").

In re Young, 25 USPQ 69 (CCPA 1935) (as restated in In re Otto, 136 USPQ 458, 459 (CCPA 1963) ("Inclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims. ").

As to claim 2, the printing device according to Yamashita is characterized in that the adaptor means (50,52, or 53) is an actuator, by way of which the excursion of the holding means (9) is controllable.

As to claim 3, the printing device according to Yamashita is characterized in that the actuator is controllable way of a motor drive (68).

6. Claims 4, 5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

7. The following is a statement of reasons for the indication of allowable subject matter: Prior art do not teach or suggest the limitation relating to the thickness or the length of the adaptor means with respect to the width of the sheet element as recited in claim 4 or claim 5.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huan H. Tran whose telephone number is (571) 272-2261. The examiner can normally be reached on at work on T-F from 6:30am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Meier can be reached on (571) 272-2149. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Huan H. Tran

Application/Control Number: 10/561,585

Art Unit: 2861

Page 5

A handwritten signature in black ink, appearing to be 'J. M. A. S.', written over the printed name of the Primary Examiner.

Primary Examiner
Art Unit 2861

hht

01/04/07